

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36378

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 355
	)	
Plaintiff-Respondent,	)	Filed: February 23, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JUSTIN ROY RICHARDS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Gregory S. Anderson, District Judge.

Order revoking probation and reinstating previously suspended unified six-year sentence, with two-year determinate term, for aggravated battery with an enhancement for use of a deadly weapon, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Stephen D. Thompson, Ketchum, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge; GRATTON, Judge;  
and MELANSON, Judge

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PER CURIAM

Justin Roy Richards was found guilty of aggravated battery with an enhancement for use of a deadly weapon, I.C. §§ 18-903, 18-907(b), 19-2520, and the district court imposed a unified six-year sentence, with a two-year determinate term. However, the district court retained jurisdiction for 180 days. Following Richards's rider, the district court suspended the sentence and placed Richards on probation. This probation was subsequently revoked and the suspended sentence ordered into execution. Richards filed an I.C.R. 35 motion for reduction of his sentence, which the district court denied. On appeal, Richards does not challenge the district

court's decision to revoke probation, but argues only that this sentence is excessive and that the district court erred in denying his Rule 35 motion.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

When we review a sentence that is ordered into execution following a period of probation, we do not base our review solely upon the facts existing when the sentence was imposed. *State v. Whittle*, 145 Idaho 49, 52, 175 P.3d 211, 214 (Ct. App. 2007). Rather we also examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *Id.* Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in revoking probation.

Next we consider Richards's argument that the district court abused its discretion by denying his Rule 35 motion for a reduction of his sentence. Idaho Criminal Rule 35 provides that a district court has discretion to "reduce a sentence upon revocation of probation or upon motion made within fourteen (14) days after the filing of the order revoking probation." The filing limitations provided by Rule 35 are a jurisdictional limit on the authority of the court to consider the motion and, unless filed within the period, a district court lacks jurisdiction to grant any relief. *State v. Sutton*, 113 Idaho 832, 833, 748 P.2d 416, 417 (Ct. App. 1987). In this case, the district court's order revoking Richards's probation was filed on February 25, 2009. Richards's Rule 35 motion was filed March 13, 2009. Because Richards's Rule 35 motion was not filed within the fourteen-day limitation provided by the rule, the district court lacked jurisdiction to consider it. Accordingly, we do not address the merits of Richards's Rule 35 motion. The district court's orders revoking probation and directing execution of Richards's previously suspended sentence and denying his Rule 35 motion are affirmed.